

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Index No. CV 8106

-----x
HOWARD HENRY,

Plaintiff,

- against -

WYETH PHARMACEUTICALS, INC., WALTER
WARDROP, ANDREW SCHASCHL and MICHAEL
McDERMOTT,

Defendants.
-----x

July 25, 2006

11:35 a.m.

Deposition of MICHAEL
McDERMOTT, taken by the Plaintiff,
pursuant to Notice, held at the offices
of Orrick, Herrington & Sutcliffe, LLP,
666 Fifth Avenue, New York, New York,
before Brian Glickman, a Shorthand
Reporter and Notary Public of the State
of New York.

A P P E A R A N C E S :

LEEDS MORELLI & BROWN, P.C.

Attorneys for Plaintiff

One Old Country Road

Suite 347

Carle Place, New York 11514

BY: STEVEN A. MORELLI, ESQ.

ORRICK, HERRINGTON & SUTCLIFFE, LLP

Attorneys for Defendants

666 Fifth Avenue

New York, New York 10103-0001

BY: JONAS H. McQUADE, ESQ.

HEATHER A. GLATTER, ESQ.

ALSO PRESENT:

KENNETH M. O'BRIEN, ESQ.

McDERMOTT

McDermott be provided to us.

MR. MCQUADE: Taken under
advisement.

(Information requested.)

Q. Mr. McDermott, can you tell
us about your educational background?

A. Sure. I have a bachelor's
degree in industrial engineering from
New Jersey Institute of Technology and
I have a master's degree in industrial
engineering from New Jersey Institute
of Technology.

Q. When did you obtain your BA
in industrial engineering?

A. 1988.

Q. And where is New Jersey
Institute of Technology?

A. Newark, New Jersey.

Q. When did you attain your
master's in industrial engineering?

A. 1989.

Q. After your attaining the
master's degree in industrial
engineering, have you had any formal

McDERMOTT

12

education experiences, have you taken any courses since then?

A. Yes, numerous courses in pharmaceutical manufacturing, good manufacturing practices, facilitation training, skills training and numerous leadership training courses.

Q. Where were these courses given?

A. Primarily given through Wyeth or its predecessors previous, American Cyanamid, C-Y-A-N-A-M-I-D.

Q. Did you apply to take these courses? I will rephrase the question.

How were you provided the opportunity opportunities to take these courses?

A. In some cases they were part of my curriculum, my training curriculum, expected for me in my role at the time at Wyeth, and actually I will clarify in all cases they were part of my position that particular role in Wyeth that I was asked to take

McDERMOTT

these courses.

Q. When you say you had a training curriculum, was that in writing?

A. I'll answer it in two ways.

In American Cyanamid it was a list of courses taken in Wyeth. It is a curriculum, formal curriculum in writing, correct.

Q. And were you required to pay for any of this training?

A. No.

Q. Other than your training through Wyeth and its predecessor, did you receive any other training since your graduation or your attaining your degree from New Jersey Institute of Technology?

A. No.

Q. Prior to working for Wyeth or its predecessors, could you tell us about your employment history?

A. I could take you through a series of small jobs and internships

1. McDERMOTT

2 but that is -- I'm not exactly sure if
3 that's what you are looking for.

4 Q. When did you first start with
5 Wyeth or its predecessors?

6 A. 1989.

7 Q. Prior to starting with Wyeth
8 or its predecessors, did you have any
9 experience in the pharmaceutical field?

10 A. Yes, I did.

11 Q. What experience did you have?

12 A. I worked as an intern during
13 my graduate program at Schering Plough
14 in Kenilworth, New Jersey.

15 Q. Any other experience?

16 A. In the pharmaceutical
17 industry, no.

18 Q. How long did you serve as an
19 intern for Schering Plough?

20 A. Approximately six months.

21 Q. And what did you do as an
22 intern at Schering Plough?

23 A. I was a packaging engineer.

24 Q. What does a packaging
25 engineer do?

McDERMOTT

A. In particular my assignment was to work on changeover techniques of how to change over a packaging line of runs of different products.

Q. What year did you hold this position?

A. It straddled 1988 to 1989.

Q. Did you have this internship prior to your attaining your bachelor's degree?

A. I had already attained my bachelor's degree. This was during my master's program.

Q. When you first went to Wyeth and its predecessors, which I'll call Wyeth from now on, what was the first position that you held?

A. My first position at Wyeth was a packaging engineer.

Q. And other than the duties that you had described previously for Schering Plough, did you have other duties at Wyeth as a packaging engineer?

McDERMOTT

A. Yes, as a packaging engineer at Wyeth I was responsible for selecting and installing new packaging equipment, troubleshooting packaging equipment, and as stated previously working on changeover techniques for packaging.

In addition I was also responsible for similar engineering projects in our print shop where we printed labels and components.

Q. Did you have your master's at this time?

A. I did, yes.

Q. How old were you when you went to Wyeth in 1989?

A. I'm 41 now, so if someone wants to do the math for me, 24 as a guess without a calculator in front of me.

Q. How long did you hold the position as packaging engineer?

A. To the best of my recollection, approximately two years.

McDERMOTT

Q. And while you were a packaging engineer, were you given a curriculum of courses to participate in at Wyeth?

A. I can't recall if there was a formal curriculum for that position in American Cyanamid at the time.

Q. During the two years that you served as packaging engineer, did you take any courses offered by Wyeth?

A. I did take courses offered by Wyeth during that period.

Q. How were you made aware of these courses?

A. By my manager at the time.

Q. Who was that?

A. The gentleman's name was Hugh, H-U-G-H, Syme, S-Y-M-E.

Q. After your position as a packaging engineer, what's the next position you held at Wyeth?

A. The next position I held was a manufacturing engineer.

Q. What were your duties as a

McDERMOTT

manufacturing engineer?

A. Similar to the packaging role; in assessment, installation of new equipment and process improvements working with the manufacturing staff on improvements to the process.

Q. How long did you hold this position?

A. Approximately two years.

Q. Did you supervise anyone in this position?

A. I did not.

Q. How about as a packaging engineer, did you supervise anyone in that position?

A. I did not.

Q. Did you take any courses while you were a manufacturing engineer at Wyeth?

A. I did.

Q. How were you made aware of these courses?

A. By my manager.

Q. Who was your manager at that

McDERMOTT

time?

A. My manager while I was a manufacturing engineer was Vel, V-E-L, Balagopal, B-A-L-A-G-O-P-A-L.

Q. Do you recall if there was a written curriculum or any kind of curriculum while you were a manufacturing engineer with respect to that position?

A. I do not recall there being a written curriculum for that position.

Q. When you talk about a written curriculum, is that for a particular position or is that just for anyone who comes to work at Wyeth as an engineer?

A. Maybe if I can explain, today in Wyeth there are formal curriculums for a position, manufacturing supervisor or manager and within that curriculum would be all the courses, documentation required for that employee, so when I referred to formal curriculums that would be in today's environment. Previously in these

McDERMOTT

positions there was not a formal written curriculum yet there were courses offered by the company that your manager would ask you, encourage you to attend.

Q. Do you know if all employees were encouraged to attend such courses?

A. They were.

Q. To your knowledge, I suppose?

A. Thank you, to my knowledge.

Q. Okay, after holding your position as manufacturing engineer, what's the next position that you held at Wyeth?

A. My next position was department head, Centrum.

Q. When did you attain this position, four years after you started?

A. Right, correct.

Q. What were the duties of this position?

A. My responsibilities were overseeing the activities associated with the manufacture of Centrum

McDERMOTT

1
2 vitamins.

3 Q. And in overseeing the
4 activities regarding Centrum vitamins,
5 did you have any supervisory role?

6 A. I did.

7 Q. What was your supervisory
8 role?

9 A. Reporting to me at the time
10 were a production supervisor and
11 approximately 45 hourly employees.

12 Q. Is this prior to the company
13 being taken over by Wyeth?

14 A. That's correct. It was prior
15 to.

16 Q. Was there any sort of
17 curriculum that went along with this
18 position department head of Centrum?

19 A. There was not a formal
20 curriculum for that role.

21 Q. Was there an informal
22 curriculum for the role?

23 A. There was again courses that
24 were offered to me by my supervisor at
25 the time.

1. McDERMOTT

2. Q. Who was your supervisor at
3. that time?

4. A. My supervisor was Steve
5. White, W-H-I-T-E.

6. Q. How long did you hold this
7. position?

8. A. Approximately two years, to
9. the best of my recollection.

10. Q. What was the next position
11. that you held at Wyeth?

12. A. The next position I held was
13. department head of Centrum Silver
14. Manufacturing.

15. Q. How long did you hold this
16. position?

17. A. Approximately one year.

18. Q. And again you served as a
19. supervisor, as a department head?

20. A. I did supervise other people.

21. Q. Who did you supervise?

22. A. I supervised at that time, to
23. the best of my recollection, three
24. supervisors, manufacturing supervisors,
25. one production engineer, and

McDERMOTT

approximately 40 hourly employees.

Q. Do you recall the names of the three supervisors that you supervised at Centrum silver?

A. If you don't mind I would be guessing to a certain extent as my next role was a similar department head position. So if I'm reaching back in my memory some of the supervisors that had reported to me. Is that a fair way to restate it?

Q. That's fine.

A. Some of those folks included Butch Babcock, B-A-B-C-O-C-K, Leon Williams, a gentleman Lance, but I apologize I can't remember his last name right now. Brian Heneffen, Lillian Cruz, again to the best of my recollection. I'm sure there were more.

Q. Do you recall the name of the production engineer that you supervised?

A. Paul, and his last name

McDERMOTT

escapes me.

Q. After holding this position as department head of Centrum Silver, what was the next position you held at Wyeth?

A. My next position was director of consumer health manufacturing, and again if I could clarify there may have been another department head assignment in between. I think the progression is close without looking at my resume.

Q. Okay, fine.

Do you have a copy of your resume here today?

A. I do not.

Q. Do you recall when approximately you took over as director of consumer health manufacturing?

A. It would have been 1994, 1995, approximately.

Q. How long did you hold that position?

A. Approximately two to three years.

McDERMOTT

Q. What was the next position that you held at Wyeth?

A. My next position was a product manager for Dimetapp, D-I-M-E-T-A-P-P. It was a marketing position in our Madison, New Jersey location.

Q. How long did you hold this position?

A. Approximately eight months.

Q. A lot of positions?

A. Yes.

Q. Thereafter, what position did you hold at Wyeth?

A. After the product manager position, I held the position of vice president operations for Solgar.

Q. How many years did you hold that position?

A. Approximately three and a half years.

Q. Where was that position located?

A. Primary location was Leonia,

McDERMOTT

New Jersey, L-E-O-N-I-A.

Q. Did you have any interaction with Pearl River during these years?

A. No, the sporadic call for, you know, help, but no, no formal oversight of Pearl River during that time.

Q. After this position as vice president of operations of Solgar, what position did you hold?

A. The next position I held was vice president manufacturing services in Madison, New Jersey.

Q. How long did you hold that position?

A. Approximately a year and a half.

Q. After holding that position, what position did you hold next?

A. The next position was site managing director for Wyeth's Pearl River facility.

Q. When did you attain that position?

McDERMOTT

A. It would be approximately four years ago. So that would make it 2002.

Q. How long did you hold that position?

A. For approximately a year and a half.

Q. What position did you hold after that position?

A. My current position managing director vaccines, Wyeth, Pearl River.

Q. And when did you attain that position 2004?

A. That was February of 2004, correct.

Q. As the site managing director of Pearl River, what were your duties?

A. As the site managing director I was responsible for our pharmaceutical production facility, our consumer health production facility, and we refer to it as site services, so engineering, HR, materials and supply, purchasing, finance, and I'm sure a few

McDERMOTT

others that I'm not recalling right now.

Q. Did you have a direct supervisory role during this time period?

A. Can you restate, please?

Q. Did anyone report to you during this time period?

A. Yes, I did have direct reports.

Q. Who reported to you?

A. Who specifically? Names?

Q. Yes.

A. My direct reports included, to the best of my recollection, Joe Vitanza, Andy Schaschl, Joe Borrelli, B-O-R-R-E-L-L-I, Mike Greenholtz, G-R-E-E-N-H-O-L-T-Z, Frank Jedliskowsky. I couldn't even -- I'm sorry, Kerrin, K-E-R-R-I-N; Mahaffey, M-A-H-A-F-F-E-Y; Jerry Saltzman, S-A-L-T-Z-M-A-N; Pete Alexandro, A-L-E-X-A-N-D-R-O, and Alan Moran, M-O-R-A-N, and of course a number of

McDERMOTT

those players changed during the period.

Q. Did you have the responsibility to hire and fire at the Pearl River facility?

MR. MCQUADE: Objection.

MR. MORELLI: I will rephrase it.

Q. Did you have any responsibility with respect to hiring and/or terminations at the Pearl River facility?

MR. MCQUADE: Objection.

A. I had responsibility for hiring at the site which my direct involvement would have been in the hiring of my direct reports, hiring layers below my organization would have been the responsibility of my direct reports and so on down the chain.

Q. And with respect to terminations --

MR. MCQUADE: Objection.

Q. -- did you have any

McDERMOTT

responsibilities with respect to any possible termination of any one at the Pearl River facility?

MR. MCQUADE: Objection.

Q. Do you understand the question?

A. Let me try and restate.

As a manager did I have responsibility for employment issues including termination of my direct reports? Yes.

Q. Other than your direct reports, did you have any responsibilities or duties with respect to terminating employees at the Pearl River facility?

MR. MCQUADE: Same

objection.

A. I would have been aware of -- I would have been aware of terminations at the site to a certain level on the organization but not direct, if you will, involvement in such terminations.

Q. Okay. Directing your

McDERMOTT

attention to the plaintiff Howard Henry, when did you first become aware of Mr. Henry in any way?

A. If you would please --

Q. In any way?

A. I couldn't put a date to it, but my first recollection of meeting Howard was on the production floor, during a tour of the production area, and meeting him just informally in the production facility.

Q. Do you recall what position you held when you met Mr. Henry on the production floor?

A. Site managing director.

Q. So prior to attaining the position of site managing director you had no interaction with Mr. Henry?

A. That is correct.

Q. Did there come a time when you supervised his work at all?

A. There had never been a time where I directly supervised Howard's work, no.

McDERMOTT

Q. Did there ever come a time where you directly participated in the preparation of his performance appraisals?

A. No, there is not.

Q. Did you at any time participate in the cascade plan of putting employees in particular positions?

A. My role in the organization cascade process was to -- was formal involvement in my direct reports. So I did participate in that, not only participate but drive that effort for my directs, it was my directs who managed that for the next level in their organization.

Q. What is this organizational cascade process, can you explain it to us?

A. The organization cascade process was a corporate initiative program that was expected from all the manufacturing sites worldwide for Wyeth

McDERMOTT

and the approach was to be sure that we had -- the primary approach was to ensure we had organization focus on the manufacturing areas. When I say manufacturing, packaging, the functions of making products for our customers.

Q. Is this an ongoing process or a process that was during a particular time period, how did that work?

A. It was a formal process again directed by corporate, but it is an inherent ongoing process as part of good management.

Q. Do you recall when you first heard the term "organizational cascade process" while at Wyeth?

A. I couldn't even guess. It was during my employment as site managing director.

Q. Do you know if prior to the time you were a site managing director they had an organizational cascade process at Wyeth?

A. I'll restrict my answer to

McDERMOTT

Wyeth Pearl River, which I'm primarily aware of, and during that time in particular my previous manager Steve white, that I had indicated earlier. He did not call it organization cascade, but we used a similar process at that time and as a matter of fact my assignment as department head was part of Steve's process for his approach.

Q. In this organizational cascade process, did you have anything to do with putting Mr. Henry in the position that he was slated to take over?

A. In the organizational process I did not have direct involvement in Howard's assignment to packaging. My involvement in the process was an awareness that the process was happening and final, if you will, administrative approval of the changes.

Q. So any change with respect to the Pearl River plant during this time period would have to be approved by

McDERMOTT

you?

A. That's not an accurate statement.

Q. I will rephrase the question. Did the change with respect to Mr. Henry was that change approved by you?

A. All the changes for affected employees as part of the organization cascade did receive my final approval.

Q. Including Mr. Henry's?

A. That is correct.

Q. Did there come a time when you were made aware that Mr. Henry was not happy with the proposed change?

A. The first time I became aware that Howard was unhappy with his proposed change was when he contacted me requesting a meeting to discuss said change.

Q. Do you recall when that occurred when he contacted you?

A. My recollection that was early January of 2004, and a subsequent

McDERMOTT

meeting was held shortly thereafter on my calendar when my administrative assistant was able to schedule that.

Q. And so you had two meetings with Mr. Henry with respect to this proposed change in his employment?

A. I had two meetings with Mr. Henry regarding this -- regarding this change and his performance review.

Q. At the first meeting what was discussed?

A. At the first meeting Howard came to my office and discussed two issues that he had regarding his employment at Wyeth. One was that he disagreed with his rating, which was a three rating out of a five scale system, three rating being meeting expectations. He strongly believed that he deserved a four rating which is exceeding expectations, and his second concern was that he was being assigned to the packaging supervisor position as part of the organization cascade.

McDERMOTT

Q. During this first meeting, did Mr. Henry show you his prior performance appraisals at Wyeth?

A. He did not.

Q. Did he indicate to you that he had been previously rated a four?

A. He did.

Q. And did he tell you that he had been previously rated a four on the two performance appraisals prior to the one he was complaining about?

A. That's correct. Howard did share with me that he had received a four in the two years prior to the current year three rating. That's correct.

Q. Did he indicate to you in this meeting why he felt he deserved a four?

A. Yes.

Q. What did he say?

A. Howard felt that based on his role being the same, so it is my recollection that he had the same role

McDERMOTT

and same supervisor for the three-year period, that -- and his workload -- he felt that his work was consistent over the three years, that his expectation would be that in the third year he would have received a four. That was his position at the time.

Q. Did he indicate to you in this first meeting or in the second meeting for that matter, that he felt that he was being given a lower performance appraisal because he had sought out a promotion?

A. He did not share that with me, no.

Q. Did he indicate to you in this first meeting what his problem with the packaging supervisor position was?

A. He did, yes.

Q. What did he say to you?

A. Howard and I had a discussion about his assignment to the packaging supervisor position. He felt that in

McDERMOTT

his mind it did not meet his career goals, and that it was a step backwards for him in terms of his employment.

Q. Did you respond to his concerns?

A. I did respond.

Q. What did you say?

A. I indicated to Howard that the packaging supervisor position was an important part of his development at Wyeth, so that he could gain direct supervisory experience as part of his -- I won't say training, but as part of his development for future roles within the company.

Q. Did he indicate to you at either the first or the second meeting that he felt that as an African American he would have a very difficult time explaining this position on his resume?

A. I can't say those were his exact words. I can say that the spirit of it, of that this change would impact

McDERMOTT

his career goals were an issue for him.

My response to Howard at the time was given that Wyeth's a very diverse site I would be concerned if that was an issue and if he had an issue he should share that with me.

Q. Would it be fair to say that he raised the issue of his race in one of those meetings with you?

A. I never had the sense that Howard raised the issue of race and even when I took it to the next step and asked him it is a diverse site is this a concern for you, he did not raise any concerns regarding race to me during either of the two meetings.

Q. Why would you say to him "this is a diverse site" if he didn't raise the issue of race himself?

A. The reference to, and again I can't say his wording, but his reference to as an African American versus as a production, you know, engineer, this was an issue for him,

McDERMOTT

that's why I brought up the issue of
diversity -- the point of diversity.

Q. So it is a fact that he did
raise the issue himself of being
African American and this might have an
impact upon him because he is an
African American?

A. He did not go -- he did not
go that far and make that statement.

Q. Let me break it down then.

A. Sure.

Q. Did he indicate to you at any
time that he was an African American,
verbally?

A. Again I cannot confirm that
the words African American was his
statement at the time. I can say to
you that for me to volunteer a response
about diversity that I did get the
point that he was referring to that.

Q. So your indication that Wyeth
is a diverse place must have been as a
result of his raising concerns with
respect to his race?

McDERMOTT

A. No. Howard, in our meetings, did not formally say to me he had an issue with race regarding his rating or his assignment. He clearly made some reference to his race for me to have suggested it, it is a diverse site and if there's any issues I would want to know about it.

Q. And you were the site director at this point that he had this meeting with you?

A. That is correct.

Q. Did you look into the issue of whether or not Howard's race played a role in his being positioned as packaging supervisor after this meeting or these meetings with him?

A. I did not pursue Howard's assignment based on a diversity issue because Howard didn't raise it to me as a diversity issue. However, I did follow-up regarding Howard's reviews which he requested that I take a look at, which I did, his three years of

McDERMOTT

reviews, and for him -- and his request for me to look at his assignment to packaging whether or not that -- whether there was anything I could do and I did follow-up on those two things.

Q. With respect to his three reviews, did you make any determination after you had looked at his three reviews?

A. Reviews you make plural, review, one, three and two, four, just to restate your question.

Q. I'm talking about the three years of reviews?

A. I'm sorry, three years.

Q. Three years of reviews?

A. I did review Howard's three years of reviews, correct.

Q. And as a result of reviewing those three years of reviews, did you come to any conclusion yourself?

A. My conclusion after reviewing Howard's reviews, for the three-year

McDERMOTT

period, was that his ratings in all three years were justified and in particular his issue with the third-year three review, the three rating in particular, I felt that that was a fair rating as again meets expectations. Given that his manager at the time had done a mid-year review with Howard, which I did review as part of his review for that year of the three rating, and based on the mid-year review based on the projects that were highlighted to Howard that needed to be completed by year end, and based on the results that not all those projects were completed on time, I felt that an at expectations was not only -- it was not only fair but a reasonable rating given that in a couple of respects he did not even meet expectations from his mid-year review of his manager.

Q. Did you have any discussions with his manager in making this determination that these ratings were

1. McDERMOTT

2 justified?

3 A. I did not have a discussion
4 with his manager regarding his reviews,
5 I had a discussion with his manager so
6 Andy Schaschl and the HR director of
7 that area, Joanne Rose.

8 Q. Why did you include Joanne
9 Rose in these discussions?

10 A. A performance-related
11 discussion regarding an employee would
12 include HR as part of the routine.

13 Q. You would normally call in
14 the manager of human resources to
15 discuss someone's review?

16 A. I would call in the HR
17 representative who is responsible for
18 these employees, regarding an
19 individual's claim that a rating was
20 incorrect, that is how I have managed
21 it in the past, how I managed it with
22 Mr. Henry and how I still manage it
23 today.

24 Q. Who was Mr. Henry's HR
25 representative, it wasn't Mrs. Rose?

McDERMOTT

A. It was Joanne Rose.

Q. Wasn't she the manager of the entire human resources department?

A. That's incorrect, Joanne was responsible for the employees in the consumer health group. She was not the HR director for the site, that was another individual.

Q. Were there any other HR representatives under Ms. Rose that dealt with this area?

A. There were not that I am aware of.

Q. Do you know if it's common procedure to do a mid-year review on an employee of Mr. Henry's status at Wyeth?

A. I'll answer your question in general, that mid-year reviews are encouraged for all employees, and it would not have surprised me that Mr. Henry received a mid-year review as did many of the employees at the time.

Q. Do you know if Mr. Henry had

McDERMOTT

received a mid-year review at Wyeth prior to this particular mid-year review ever?

A. I'm not aware because I didn't ask for it nor did I review any mid-year reviews of Howard prior to this year in question.

Q. Did you think it might be unusual that a mid-year review was being done for Mr. Henry after he had rated a four the year prior?

A. It does not surprise me at all that Mr. Henry was -- went through a formal mid-year review process. It is a process we encourage for all employees.

Q. Do you know or did you have any discussions with anyone concerning changing Mr. Henry's performance appraisal for this particular year?

A. I'm sorry, could you restate?

Q. Sure.

At any time during this period, were there any discussions that

McDERMOTT

involved you concerning changing Mr. Henry's performance appraisal for this particular year?

A. Yes.

Q. With whom did you have such discussions?

A. First the -- the first discussion about this was with Howard himself. I encouraged Howard in our first meeting when he had concerns with his rating that it's every employee's right to disagree with the rating and put it in writing and provide any supporting documentation that would help us make that decision, which I encouraged him to do.

After reviewing his three years of reviews and discussions with Joanne Rose and Andy Schaschl, it was Joanne and I who suggested that we incorporate some of Howard's comments regarding his comments rebuttal, if you will, regarding his review into a modified review.

McDERMOTT

Q. Do you know why they suggested that this be done? Was there any discussion as to why this should be done?

A. This again would be something that would be -- is unusual but not unheard of for an employee to take issue with their review, and the process is not unusual to me that an employee would take exception to their review, would provide commentary or supporting documents and that that review would be modified based on the employee's comments.

What I do not have a history on in my career at Wyeth is actually changing a performance rating based on that process, but I do have experience with my earlier comment of making changes to a review based on employee's comments.

Q. I'll repeat my question. Was there any discussion between Mr. Schaschl Ms. Rose and

McDERMOTT

yourself with respect to why this particular performance appraisal should be changed? Did the three of you feel it was unfair, the original performance appraisal?

A. We did not feel it was unfair which is why the three rating stood.

Q. But you felt the three of you felt that it should be modified to include Mr. Henry's comments?

MR. MCQUADE: Objection.

Q. Is that an accurate statement?

A. That's not an accurate statement.

Q. The discussion that was held between yourself, Mr. Schaschl and Ms. Rose resulted in a decision being made that the performance appraisal should be modified; is that correct?

A. The outcome of our discussion was that the performance review would be modified, correct.

Q. And as a result of those

McDERMOTT

51

discussions, did you gain an understanding as to why that was appropriate in this particular situation?

A. My understanding of the changes were made based on documentation that Howard had prepared that there were statements in his review that merited modifications based on discussions with Howard.

Q. Do you recall when the review was modified?

A. I do not.

Q. Do you recall being told that Howard had leveled a complaint of racial discrimination with Mr. Bigelow?

A. So your question was do I recall when?

Q. If you know when or if you were ever made aware that a discrimination complaint was made by Howard to Mr. Bigelow?

A. I am not aware -- I was not aware at the time that Mr. Henry had

McDERMOTT

52

1 made such a claim to Mr. Bigelow.
2

3 Q. Were you ever approached with
4 respect to conducting an investigation
5 with respect to any claim of
6 discrimination lodged by Mr. Henry to
7 Mr. Bigelow?

8 MR. MCQUADE: Objection.

9 Q. Do you understand the
10 question?

11 A. I am aware that Mr. Bigelow,
12 my boss at the time, requested an
13 employee relations individual from our
14 corporate headquarters come and discuss
15 Howard's complaints around his rating
16 and his assignment to packaging.

17 Q. Do you recall when you were
18 made aware of this?

19 A. I would guess to the best of
20 my knowledge in February, early
21 February, when I had a meeting with
22 Peter and the employer relations rep
23 from Collegeville that such an
24 investigation would commence.

25 Q. Do you recall if the decision

McDERMOTT

53

1
2 to alter or change Mr. Henry's
3 performance appraisal was made
4 subsequent to your finding out that a
5 discrimination complaint had been
6 lodged by Mr. Henry to your boss, Mr.
7 Bigelow?

8 A. The change to Mr. Henry's
9 review in my understanding -- not in
10 mine, was made prior to my knowledge
11 that Howard had lodged such a complaint
12 with Mr. Bigelow.

13 Q. During this time period,
14 February of 2004, let's say for a month
15 or two thereafter, did anyone speak to
16 you with respect to performing an
17 investigation concerning Mr. Henry's
18 allegations of discrimination?

19 A. I was not aware at the time
20 that there was an investigation
21 regarding racial discrimination. My
22 understanding was that the
23 investigation was in any other
24 employment matter, an employer
25 relations person would come and assess

McDERMOTT

54

1 a rating or assignment concern.

2 Q. At any time, did you speak to
3 Eugene Sackett with respect to Howard
4 Henry?
5

6 A. The discussion I can
7 recollect with Eugene Sackett, as the
8 employer relations rep from corporate,
9 was with himself and Peter Bigelow,
10 perhaps Donna Grantland who was the HR
11 person at the time, that this
12 investigation would commence. That was
13 my only discussion I recollect with
14 Eugene Sackett.

15 Q. Did Mr. Sackett question you
16 with respect to the allegations that he
17 was investigating?

18 A. While I can't say for sure
19 discussions with Eugene regarding this
20 -- I don't recall having a meeting
21 regarding the investigation with
22 Eugene, no.

23 Q. You had indicated that there
24 were two items that were discussed
25 between yourself and Mr. Henry, one was

McDERMOTT

55

1
2 the ratings and whether or not they
3 were justified, and the other was his
4 being transferred to the packaging
5 supervisor position.

6 What was his concern with
7 respect to the packaging supervisor
8 position, did he tell you that he felt
9 it was a demotion?

10 A. Howard shared with me his
11 dissatisfaction with the packaging
12 supervisor position in a number of
13 regards. The first that he felt the
14 packaging -- yes, that the packaging
15 supervisor position in his mind was a
16 demotion, and, secondly, that he had
17 already had management experience in
18 his current role and didn't need this
19 packaging supervisor job to gain
20 management experience.

21 Those were the two things he
22 shared with me about the change.

23 Q. Did you address either of
24 those concerns with Mr. Henry either at
25 these meetings or thereafter?

McDERMOTT

56

1
2 A. I did address his concerns at
3 the meetings with him, and in
4 particular his -- and in particular his
5 -- well, we'll start with his feeling
6 that he already manages people as a
7 project engineer.

8 What I shared with Howard at
9 the time was, yes, indeed as a project
10 engineer you do involve and direct the
11 activities of many individuals, he's
12 not formally in a management or
13 supervisory position and as such
14 doesn't have experience in that role in
15 performance management, salary,
16 development plans for an individual.

17 So I agree with him, he does
18 have some management experience in his
19 current role, but that the packaging
20 supervisor position would give him that
21 formal supervisory experience that
22 would be very beneficial to his career.

23 The second being on whether
24 or not packaging was a demotion for him
25 or not, I felt that that was -- maybe

McDERMOTT

57

more to his point packaging was an entry position and packaging.

My response to him was packaging can be an entry position as being any other job, that packaging is a critical part of the work we do. It's the area closest to our customer and it's an area that I felt that Howard's background, as a project engineer, he could really benefit our packaging facility at the time, so I really felt this was a good thing for his career and his development.

Q. Did you share with him that when you started in the field that you had started in packaging?

A. I didn't need to share that with Howard, he knew that I started in packaging and we did talk about that.

And again for me it was just luck or whatever that is, where I started that doesn't mean work in the packaging area is only for first time folks in the organization. It is a

McDERMOTT

58

critical step in the process.

Q. In your experience at Wyeth and its predecessors, can you recall any instance where a chemist or a chemical engineer was asked to be a packaging supervisor in the Pearl River facility?

A. Yes, I am aware of chemical engineers being packaging supervisors.

Q. Who?

A. One in particular I can recall is Heidi Zeck, Z-E-C-K, and I'm --

Q. When did Ms. Zeck serve in that position?

A. Heidi -- I'd be guessing but '94, '95.

Q. Is Heidi still with the company?

A. She is not.

Q. Do you know when she left Wyeth or its predecessor?

A. A couple of years later, so '96 perhaps.

McDERMOTT

59

1. Q. Do you recall if she left
2. Wyeth or its predecessor from the
3. position of packaging supervisor?
4.

5. A. I don't recall.

6. Q. Do you recall if she held any
7. other position after packaging
8. supervisor at Wyeth or its predecessor?
9.

10. A. The chronology, I can't -- I
11. wouldn't say I recall, but she had held
12. the position of production engineer
13. previously or previously or post that
14. job.

15. Q. Do you know where Heidi Zeck
16. presently is employed?

17. A. I do not.

18. Q. Do you recall being involved
19. with Mr. Henry being put on a
20. performance improvement plan?

21. A. I was not aware that Mr.
22. Henry was put on a performance
23. improvement plan.

24. Q. That discussion never
25. happened in your presence that he was
going to be put on a PIP?

MCDERMOTT

60

A. It never happened in my presence and just to state that when I moved to the vaccines position in February of 2004, that was a time when I no longer had any responsibility organizationally for the group that Howard worked in. So I would not have been privy to that discussion on a PIP for Howard.

Q. Were you involved in any discussion involving Mr. Henry coming to vaccines after you had assumed that new position?

A. In our second meeting with -- my second meeting with Howard again in the first meeting, he shared his two concerns about the role and the rating, in the second meeting I reiterated to him that I had reviewed his rating and felt his rating was fair, based on my comments earlier, and I also stated to Howard that -- and I'm sorry in the first meeting, I told him I encouraged him to take the packaging role because

McDERMOTT

61

that was his assignment, and it was a good opportunity for him.

In the second meeting when he reiterated his concerns about taking the packaging role, I committed to Howard that I would explore other options for Howard, and my point at the time and still is today, that in the past when I've done this, I have never had an employee that upset or almost refuse to take a position, so Howard's concerns seemed very real to me.

I shared with Howard that I would try to find him another role, either in the current organization, and I would be happy to help him find a role in the vaccines organization, which I was not responsible for at the time, it was a separate group on site, but that I had some influence knowing people in that area that I would be happy to help him find a role within vaccines if that put him in a place where he was more motivated to be .

McDERMOTT

62

Howard's response was that he didn't need my help to do that, that he would pursue those opportunities on his own.

MR. MCQUADE: Off the record for a second.

(Discussion off the record.)

MR. MORELLI: I want to thank you I appreciate your candor, and we're done thank you.

MR. MCQUADE: Could I just ask one question?

Off the record for a second.

(Discussion off the record.)

(Continued to following page.)